

SENATE BILL No. 397

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-42-4-4.

Synopsis: Obscene digitized images. Adds an obscenity standard to possession of a computer generated image, a digitized image, or a drawing of a child who appears to be less than 16 years of age.

Effective: July 1, 2003.

Dembowski

January 16, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 397

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-42-4-4, AS AMENDED BY P.L.3-2002,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 4. (a) As used in this section:
4 "Disseminate" means to transfer possession for free or for a
5 consideration.
6 "Matter" has the same meaning as in IC 35-49-1-3.
7 "Performance" has the same meaning as in IC 35-49-1-7.
8 "Sexual conduct" means sexual intercourse, deviate sexual conduct,
9 exhibition of the uncovered genitals intended to satisfy or arouse the
10 sexual desires of any person, sado-masochistic abuse, sexual
11 intercourse or deviate sexual conduct with an animal, or any fondling
12 or touching of a child by another person or of another person by a child
13 intended to arouse or satisfy the sexual desires of either the child or the
14 other person.
15 (b) A person who knowingly or intentionally:
16 (1) manages, produces, sponsors, presents, exhibits, photographs,
17 films, videotapes, or creates a digitized image of any performance



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or incident that includes sexual conduct by a child under eighteen (18) years of age;
 (2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or
 (3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;
 commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

- (1) a picture;
- ~~(2) a drawing;~~
- ~~(3)~~ (2) a photograph;
- ~~(4)~~ (3) a negative image;
- ~~(5)~~ (4) undeveloped film;
- ~~(6)~~ (5) a motion picture;
- ~~(7)~~ (6) a videotape; **or**
- ~~(8) a digitized image; or~~
- ~~(9)~~ (7) any pictorial representation;

that depicts or describes sexual conduct by a child who is less than sixteen (16) years of age or appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) A person who knowingly or intentionally possesses a computer generated image, a digitized image, or a drawing that depicts or describes sexual conduct by a child who is less than sixteen (16) years of age and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(e) A person who knowingly or intentionally possesses a computer generated image, a digitized image, or a drawing that depicts or describes sexual conduct by a child who appears to be less than sixteen (16) years of age and that is obscene (as described under IC 35-49-2-1) commits possession of child pornography, a Class D felony.

~~(f)~~ (f) Subsections (b), ~~and~~ (c), ~~and~~ (d) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials ~~are~~ is for

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1 legitimate scientific or educational purposes.

2 SECTION 2. [EFFECTIVE JULY 1, 2003] IC 35-42-4-4, as
3 amended by this act, applies to offenses committed after June 30,
4 2003.

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